

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION**

NO. 7:09-CV-00187-D

NATIVE ANGELS HOMECARE)
AGENCY, INC.,)
a North Carolina corporation,)
)
Plaintiff,)
v.)
)
KATHLEEN SEBELIUS,)
Secretary of the United States Department)
of Health and Human Services,)
in her official capacity,)
)
Defendant.)
)
-----)

**MEMORANDUM &
RECOMMENDATION**

This cause comes before the Court upon responses by Plaintiff Native Angels Homecare Agency, Inc. (“Native Angels”) and Defendant Secretary of the United States Department of Health and Human Services Kathleen Sebelius (“the Secretary”) to a memorandum and recommendation by the undersigned (DE-41) recommending that Native Angels receive an award of attorney fees as the prevailing party in the underlying litigation. (DE-42, DE-43, DE-44). In the memorandum and recommendation, the undersigned recommended awarding attorney fees to Native Angels at an hourly rate of \$172.75 for the 355 hours of attorney work performed in the case. (DE-41, p.13). However, the undersigned agreed with the Secretary that the hours claimed by Native Angels for paralegal services should be awarded at the prevailing market rate for paralegal services, rather than at the attorney rate. The undersigned therefore directed the parties to submit evidence of the prevailing market rate for paralegal services in order to make an additional recommendation of an award based on the outstanding 80.9 hours

worth of paralegal work performed in the instant litigation. Native Angels and the Secretary have now responded with evidence of the prevailing market rate for paralegal services. Accordingly, Native Angels' motion for attorney fees as to the paralegal services performed is now ripe for adjudication.

Native Angels avers that the two paralegals who worked on the case each have more than twenty years' experience, and that their hourly billing rates of \$178.48 and \$191.13 fall within the usual and customary rates charged by paralegals with commensurate skills and experience. Native Angels supports its position with the results of a 2011 survey conducted by the International Paralegal Management Association ("IPMA"). According to the IPMA, the average billing rate for paralegals in the "West South Central" region is \$203 per hour, based upon responses provided by thirty law firms reporting 295 positions. (DE-42-1).

The Secretary contends that, according to the results of a 2011 survey conducted by the North Carolina Bar Association's Paralegal Division, the prevailing market rate for paralegal services in North Carolina is \$110.43 per hour. The Secretary calculates the average hourly billing rate of \$110.43 based on the responses of 215 paralegals working in North Carolina. (DE-44, p.2).

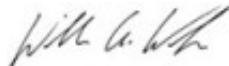
The undersigned finds the Secretary's evidence as to the prevailing market rate for paralegal services in North Carolina more persuasive than that submitted by Native Angels. Although there were slightly fewer responses in the North Carolina Bar Association's survey, the survey was nevertheless specific to North Carolina, as opposed to the IPMA's regional results. The \$110.43 hourly figure moreover better comports with the recommendation that Native Angels receive attorney fees at an hourly rate of \$172.75 for the 355 hours of attorney work performed in the case. The undersigned therefore recommends that Native Angels be awarded

attorney fees for the remaining 80.9 hours of paralegal services at a rate of \$110.43 per hour, resulting in an award of \$8,933.79.

CONCLUSION

For the foregoing reasons, it is hereby RECOMMENDED that Plaintiff Native Angels' motion for attorney fees and costs (DE-34) be GRANTED. The undersigned RECOMMENDS Native Angels be awarded \$8,933.79 in attorney fees based on the 80.9 hours of paralegal services performed in the instant litigation. This recommendation is in addition to the award of \$61,326.25 in attorney fees and \$9,981.41 in costs already recommended at docket entry 41.

SO RECOMMENDED in Chambers at Raleigh, North Carolina this 26th day of October, 2011.



WILLIAM A. WEBB
UNITED STATES MAGISTRATE JUDGE